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Remarks

This is in response to the official action mailed December 1, 2003 (Paper No. 19). Applicant notes with appreciation the Examiner's professionalism and courtesy during the telephone interview conducted on February 25, 2004, and in preparing the Interview Summary (Paper No. 20).

The Objections

In response to the objections to the claims (as opposed to the § 103 rejections), Applicant has amended Claim 1 to delete the phrase "and for allowing said upper-knuckle to be separated from said bushing," which appears to have introduced some unintended ambiguity into the claim.

Applicant respectfully points out that the sleeve (e.g. 84) and the bushing (e.g. 88) are two different elements (although they can be formed into one piece as set forth in Claim 10 below) and that they appear to be recited properly in the remaining claims.

Similarly, Claim 6 has been cancelled in order to address the Examiner's concerns.

Claim 10 has been amended in response to the Examiner's objection and the amending language is taken from the specification as filed at page 9, lines 10-12. These recitations also appear at Paragraph 0040 of the published application (No. 20020116788).

As noted by the Examiner, Claims 29-32 are substantially identical to Claims 12-15. Accordingly, Claims 29-32 have been cancelled.

Independent claim 33 has been amended to highlight the invention's environment of use and to therefore reduce and simplify the number of claims under consideration.

The § 103 Rejections

As set forth in these two papers, the issue remains the Office's position of obviousness based on the combinations raised in the December 1, 2003 office action.

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During the course of prosecution to date, the Office has presented and argued a variety of obviousness combinations as against the claims. Applicant has discussed each of these in turn. In the December 1, 2003 office action, the combination is presented as between Rhodes '306 and Douglas '650. According to the Office, Rhodes discloses the gravity gate but fails to disclose the bushing and sleeve. The Office thus turns to Douglas '650 to incorporate such a bushing and sleeve which is illustrated at 10 in the Douglas patent. According to the Office, the combination discloses the claimed invention.

In response, Applicant must again insist upon applying the well-understood maxim that if the Office wishes to appeal to the teachings of a reference, the reference and its teachings must be evaluated in their entirety, and the Office is not entitled to selectively choose those portions of the reference that favors the Office's position while ignoring those portions of the reference that teach away from the Office's position.

In this case, the Douglas '650 patent specifically teaches away from the use of lift off or gravity hinges. Specifically, at column 1, lines 13 through 31, Douglas argues several disadvantages of lift off or "rising and falling" hinges. According to Douglas, the disadvantages of such hinges can be avoided by using the structure that he discloses and claims; namely, the insert 12 with the oblique surface 15.

When Douglas is properly considered as teaching the disadvantages of lift off hinges, Douglas no longer remains as a reference that can be favorably combined with lift off hinges because Douglas explicitly teaches the person of ordinary skill in the art to avoid such combinations.

Therefore, the Office's use of Douglas in any combination with a lift off structure is inconsistent with Douglas itself and such combinations must collapse under Douglas' own teaching.

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Other Indicia of Nonobviousness

In addition to explaining the collapse of the Office's logic once Douglas '650 is properly applied in its entirety, Applicant has submitted herewith a Declaration under Rule 132 (37 C.F.R. § 1.132) from named inventor Daniel P. Cedrone setting forth evidence of the commercial success of the claimed invention. Such commercial success, although not the exclusive arbiter of non-obviousness, is a proper factor to be considered by the Office.

Although Mr. Cedrone is the named inventor and certainly has an interest in obtaining patent protection, he also brings 23 years of experience to this market and is the principal (President) of PolyTech Industrial, Inc. Furthermore, PolyTech remains the sole supplier of the invention to date. Accordingly, Applicant submits that Mr. Cedrone's declaration provides an appropriate evaluation of the commercial success of the invention regardless of his status as named inventor.

As set forth in Mr. Cedrone's declaration, since 2000 the claimed invention has created a market worth several hundreds of thousands of dollars per year. Referring to Exhibit 1 of the declaration, Applicant respectfully points out that within nine months of its introduction, over 800 of the hinges had been at a price point being of about \$150 per hinge.

This commercial success is an objective indication of the non-obviousness of the claimed invention.

Additionally, as set forth in Paragraphs 16 and 17 of Mr. Cedrone's declaration, the self closing gate and hinge of the present invention has now been included in the McMaster-Carr catalog (www.mcmaster.com) which is a premier source of mechanical equipment in the United States and global markets. McMaster is not required to carry Applicant's invention, and the decision to do so is McMaster's rather than Applicant's. Stated differently, the acceptance of the claimed invention in the McMaster catalog is an objective indication of its success on the part of a party (McMaster) that has no particular interest in the patentability of the invention.

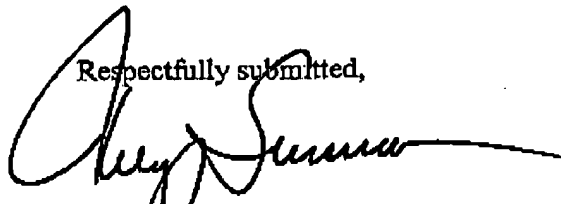
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Summary

In summary, the logical inconsistency of the Office's combination, taken together with the objective indicia of non-obviousness, demonstrate the nonobviousness of the claimed invention in the face of the combination as applied in the December 1, 2003 official action.

Therefore, Applicant respectfully submits that the combination should be removed because of its inherent weakness, and that the Office should recognize the nonobviousness of the claimed invention based on its commercial success. Accordingly, Applicant respectfully submits that the claims be passed to allowance at the earliest possible opportunity.

Respectfully submitted,



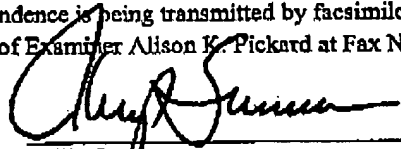
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted by facsimile to the Commissioner for Patents to the attention of Examiner Alison K. Pickard at Fax No. (703) 872-9306
April 30, 2004.

4-30-2004
Date



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